

EXHIBIT 1

Darnell Stanislaus

From: Darnell Stanislaus
Sent: Friday, September 4, 2020 8:49 PM
To: David I. Greenberger
Cc: Gabriel Levinson
Subject: RE: Hirshman v. Franzen (20 Civ. 06322)

Dave –

No need to read anything antagonistic into the “tenor” of my email – none was intended.

The letter as drafted presents a few issues.

First, it misstates our position on how the motion to compel should be teed up for the Court. While we did discuss on our call how best to raise the arbitration issue in the interests of judicial economy and the parties’ resources, we did not agree to defendant’s proposed phased-motion approach on the call. Rather, Gabriel said we would consider defendant’s proposal and get back to you with our response.

Given the early posture of the action, we think judicial economy and the parties’ resources are best served by defendant moving under FRCP 12 on all grounds defendant contends are dispositive of the action. It would be an obvious waste of resources for the parties to potentially brief (and the court to potentially decide) two separate dispositive motions when we can brief all threshold issues at once and resolve definitively whether this action will proceed before Judge Woods or not. As I am sure you already know, defendant’s motion to compel arbitration can be brought as a FRCP 12(b)(1) motion and – to the extent it even matters – plaintiff would not object to defendant framing the motion in that manner. Obviously, if needed, we are willing to stipulate to a mutual extension of Judge Woods’ page limits (which he would have to so-order) to permit both parties to adequately address all of the grounds on which defendant intends to move.

Second, the draft letter’s citation to *Nicosia v. Amazon.com, Inc.*, 84 F. Supp. 3d 142 (S.D.N.Y. 2015) is both improper and inaccurate. Among other reasons, it is not an objective statement of law and, more importantly, it misstates the legal analysis necessary to resolve defendant’s arbitration argument. To be clear, while we acknowledge the parties’ agreement dated June 1, 2017 (the “Agreement”) contains an arbitration provision, our position is that the arbitration provision is irrelevant to the claim asserted in this action, which relates to your client’s tortious interference with our client’s agreements with third-parties. The Court, therefore, will not be determining whether the arbitration provision is enforceable/binding, but rather will be deciding two distinct, though related, issues: (i) in the first instance, whether the Agreement is even applicable to plaintiff’s claim (which we clearly do not think it is) and (ii) only if the Court rules in the affirmative on the first issue, whether the Court or the arbitrator gets to determine if plaintiff’s claim is subject to arbitration under the Agreement.

In light of the above, we advise revising the letter to request a pre-motion conference as required under Judge Woods’ Individual Practice Rule 2(C)(i). At the pre-motion conference, we can present our (proposed) stipulated briefing schedule to the Court.

Happy to discuss this weekend if you have any questions. Otherwise, have a relaxing and/or exciting holiday weekend!

Darnell

Darnell Stanislaus

Associate

dstanislaus@polsinelli.com

212.413.2862

600 Third Avenue
New York, NY 10016



Polsinelli PC, Polsinelli LLP in California

polsinelli.com

From: David I. Greenberger <david@baileyduquette.com>
Sent: Friday, September 4, 2020 4:50 PM
To: Darnell Stanislaus <DStanislaus@Polsinelli.com>
Cc: Gabriel Levinson <GLEvinson@Polsinelli.com>
Subject: Re: Hirshman v. Franzen (20 Civ. 06322)

Darnell-

Surprised by the tenor of your email since it was you who told me that you expected to get back to me today (and I was only checking in).

Regardless, I do appreciate Gabriel being on vacation this week (especially since, as I told you, I am too) and am not seeking to significantly intercede on the same.

Really what I'm looking for is guidance as to whether I am filing this letter with your consent or opposition (in which case I need to file promptly), and when you want to have for the opposition if you consent. We set October 1 for our lead brief on the call last week, so hopefully you and Gabriel have been able to compare your calendars since then for an opposition brief date that works well for you both.

Thank you again.

Best,

Dave

David I. Greenberger, Esq.
BAILEY DUQUETTE P.C.
104 Charlton Street
Suite 1W
New York, NY 10014
O: [\(212\) 658-1946](tel:(212)658-1946) ext. 204
M: [\(646\) 633-2987](tel:(646)633-2987)
F: [\(866\) 233-5869](tel:(866)233-5869)
david@baileyduquette.com
www.baileyduquette.com

Confidentiality Notice

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

On Sep 4, 2020, at 4:26 PM, Darnell Stanislaus <DStanislaus@polsinelli.com> wrote:

Dave, to be clear, we expected to receive your draft letter last week, but we didn't get it until Wednesday this week, which was only a couple days before the holiday weekend. Understandably, we have to take issue if your client is now insisting on urgency.

In any event, Gabriel is on vacation with his family now, but is going to pull away from his family time so we can discuss get back to you on this today.

Darnell

Darnell S. Stanislaus
Polsinelli PC
600 Third Avenue
New York, New York 10016
dstanislaus@polsinelli.com

On Sep 4, 2020, at 4:06 PM, David I. Greenberger <david@baileyduquette.com> wrote:

EXTERNAL EMAIL david@baileyduquette.com

Darnell-

Thank you for your email below. Since it is now 4 p.m. on Friday, can I please get an update of where stand, and more specifically whether there will be opposition to the letter? As I trust is obvious by now, it is my strong preference to submit an application to the Court that includes a proposal and briefing schedule acceptable to all involved, but I am mindful of the facts that: (a) September 10 is my client's current deadline and (b) we are entering a holiday weekend, such that I will need to get something filed fairly promptly.

Please advise.

Best,
Dave

David I. Greenberger, Esq.
BAILEY DUQUETTE P.C.
104 Charlton Street
Suite 1W
New York, NY 10014
O: [\(212\) 658-1946](tel:(212)658-1946) ext. 204
M: [\(646\) 633-2987](tel:(646)633-2987)
F: [\(866\) 233-5869](tel:(866)233-5869)
david@baileyduquette.com
www.baileyduquette.com

Confidentiality Notice

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or

disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

On Sep 3, 2020, at 5:30 PM, Darnell Stanislaus <DStanislaus@polsinelli.com> wrote:

Dave –

Confirming receipt of your draft letter. We are reviewing, and obviously have to discuss with our client and get authorization before we can sign off on anything. We expect to get back to you by tomorrow.

Best,
Darnell

Darnell Stanislaus

Associate

dstanislaus@polsinelli.com

212.413.2862

600 Third Avenue
New York, NY 10016

<image001.png>

Polsinelli PC, Polsinelli LLP in California

polsinelli.com

From: David Greenberger <david@baileyduquette.com>

Sent: Wednesday, September 2, 2020 1:30 PM

To: Gabriel Levinson <GLEvinson@Polsinelli.com>; Darnell Stanislaus <DStanislaus@Polsinelli.com>

Subject: Re: Hirshman v. Franzen (20 Civ. 06322)

EXTERNAL EMAIL david@baileyduquette.com

Gabriel and Darnell-

In furtherance of our call last week, please see the attached proposed letter to the Court.

As you will see, it lines up with our discussion, and my representation as to Mr. Franzen's intentions.

In this regard, I left blanks for your client's opposition due date and our reply on the Motion to Compel. Please let me know what works for your side on the opposition deadline, and I'll then advise you of a reasonable date thereafter for the reply.

Since Mr. Franzen's current deadline to answer, respond or otherwise move is September 10 (and I am off this week), I would appreciate hearing back from you promptly so that I can file the letter.
Thank you both for working collaboratively on this with me.

Best,
Dave

David I. Greenberger, Esq.
BAILEY DUQUETTE P.C.
104 Charlton Street
Suite 1W
New York, NY 10014
O: (212) 658-1946 ext. 204
M: (646) 633-2987
F: (866) 233-5869
david@baileyduquette.com
www.baileyduquette.com

Confidentiality Notice

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

On Aug 27, 2020, at 1:17 PM, Gabriel Levinson
<GLEvinson@Polsinelli.com> wrote:

We will call you shortly. Thank you.

Gabriel Levinson

Shareholder

glevinson@polsinelli.com
T 212.413.2853 F 212.202.7582
600 Third Avenue
New York, NY 10016
polsinelli.com

From: David Greenberger <david@baileyduquette.com>
Sent: Thursday, August 27, 2020 1:17 PM
To: Gabriel Levinson <GLEvinson@Polsinelli.com>
Cc: Darnell Stanislaus <DStanislaus@Polsinelli.com>
Subject: Re: Hirshman v. Franzen (20 Civ. 06322)

EXTERNAL EMAIL david@baileyduquette.com

When I didn't hear from you on the 12:30 invite, I got on another call. I am free now. Thank you.

David I. Greenberger, Esq.
BAILEY DUQUETTE P.C.
104 Charlton Street
Suite 1W
New York, NY 10014
O: (212) 658-1946 ext. 204
M: (646) 633-2987
F: (866) 233-5869
david@baileyduquette.com
www.baileyduquette.com

Confidentiality Notice

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

On Aug 27, 2020, at 1:11 PM, Gabriel Levinson
<GLEvinson@Polsinelli.com> wrote:

We tried reaching you per your request that we try you on your cell phone, and left you a voice mail. What is your availability today to speak?

Gabriel Levinson

Shareholder

glevinson@polsinelli.com

T 212.413.2853 F 212.202.7582

600 Third Avenue
New York, NY 10016

polsinelli.com

From: David Greenberger
<david@baileyduquette.com>

Sent: Thursday, August 27, 2020 10:22 AM

To: Gabriel Levinson <GLEvinson@Polsinelli.com>
Cc: Darnell Stanislaus <DStanislaus@Polsinelli.com>
Subject: Re: Hirshman v. Franzen (20 Civ. 06322)

Does 12:30 work? And what is the best number(s)?

David I. Greenberger, Esq.
BAILEY DUQUETTE P.C.
104 Charlton Street
Suite 1W
New York, NY 10014
O: (212) 658-1946 ext. 204
M: (646) 633-2987
F: (866) 233-5869
david@baileyduquette.com
www.baileyduquette.com

Confidentiality Notice

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed.

This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

On Aug 26, 2020, at 8:40 PM,
Gabriel Levinson
<GLEvinson@Polsinelli.com>
wrote:

Perhaps tomorrow afternoon?

Please copy my colleague Darnell Stanislaus (copied here) on all communications going forward.

On Aug 26, 2020, at
2:21 PM, David
Greenberger

<david@baileyduquette.com> wrote:

**EXTERNAL
EMAIL** david@baileyduquette.com

Gabriel-

I write in furtherance
of my voicemail.
As set forth therein,
kindly be advised that
Don Franzen has
retained me and my
firm to represent him
in connection with the
above captioned
action. Please direct
all future
communication
concerning the same
to me (my full contact
information follows
below).

Kindly let me know
your availability for a
quick call for
introductions and to
discuss Mr. Franzen's
time for responsive
papers.

Thank you,
Dave

David I. Greenberger,
Esq.

**BAILEY
DUQUETTE P.C.**
104 Charlton Street
Suite 1W
New York, NY 10014
O: (212) 658-1946
ext. 204
M: (646) 633-2987
F: (866) 233-5869
david@baileyduquette.com
www.baileyduquette.com

Confidentiality Notice

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed.

This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

This electronic mail message contains CONFIDENTIAL information which is (a) ATTORNEY - CLIENT PRIVILEGED COMMUNICATION, WORK PRODUCT, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) intended only for the use of the Addressee(s) named herein. If you are not an Addressee, or the person responsible for delivering this to an Addressee, you are hereby notified that reading, copying, or distributing this message is prohibited. If you have received this electronic mail message in error, please reply to the sender and take the steps

necessary to delete the message
completely from your computer system.